

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 WHATCOM COUNTY ASSOCIATION OF
6 REALTORS, BUILDING INDUSTRY
7 ASSOCIATION OF WHATCOM COUNTY,
8 WHATCOM AFFORDABLE HOUSING
9 GROUP, SOUTH YEW STREET GROUP,
10 CITIZENS' ALLIANCE FOR PROPERTY
RIGHTS, WHATCOM BUSINESS ALLIANCE,

11 Petitioners,

12 v.
13

14 CITY OF BELLINGHAM,

15 Respondent.
16
17

Case No. 17-2-0002

FINAL DECISION AND ORDER

18 **SYNOPSIS**

19 *Whatcom County Association of Realtors, Building Industry Association of Whatcom*
20 *County, Whatcom Affordable Housing Group, South Yew Street Group, Citizens' Alliance for*
21 *Property Rights, and Whatcom Business Alliance, (Petitioners) challenged City of*
22 *Bellingham (City) Ordinance No. 2016-11-037 amending the City's Comprehensive Plan*
23 *(CP), alleging it was internally and externally inconsistent, failed to include a housing*
24 *demand analysis, relied upon a flawed land capacity analysis, and wrongly denied including*
25 *properties into the urban growth area (UGA). The Board found the Petitioners failed to carry*
26 *their burden of proof to show the City's ordinance was clearly erroneous and closed the*
27 *case.*
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I. BACKGROUND AND INTRODUCTION

The City adopted Ordinance No. 2016-11-037 which repealed the City's 2006 Comprehensive Plan and replaced it with the City's 2016 Comprehensive Plan (2016 CP). Petitioners challenge the City's action because Whatcom County did not expand the urban growth area to include Petitioners' property. Petitioners also challenge the City's urban water and sewer service policies regarding the City's UGA and properties annexed to the City. Petitioners allege the City's 2016 CP violates several Growth Management Act (GMA) provisions by not including their properties within the UGA. Procedural matters relevant to the case are in Appendix A.

II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board finds it has jurisdiction over the remaining subject matter of the petition pursuant to RCW 36.70A.280(1).

III. BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption. This presumption creates a high threshold for challengers as the burden is on the Petitioners to demonstrate that any action taken by the City does not comply with the GMA.

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.¹ The scope of the Board's review is limited to determining whether a City has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.² The GMA directs that

¹ RCW 36.70A.280, RCW 36.70A.302.

² RCW 36.70A.290(1).

1 the Board, after full consideration of the petition, shall determine whether there is
2 compliance with the requirements of the GMA. The Board shall find compliance unless it
3 determines that the City's action is clearly erroneous in view of the entire record before the
4 Board and in light of the goals and requirements of the GMA.³ In order to find the City's
5 action clearly erroneous, the Board must be "left with the firm and definite conviction that a
6 mistake has been made."⁴
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8 IV. ANALYSIS AND DISCUSSION

9 ABANDONED ISSUES:

10 At the outset, the Board reiterates that "Pursuant to WAC 242-03-590(1), failure of a
11 party to brief an issue in the opening brief is deemed abandonment of that issue."⁵ Further,
12 the Board has held "[a]n issue is briefed when legal argument is provided; it is not sufficient
13 for a petitioner to make conclusory statements, without explaining how, as the law applies to
14 the facts before the Board, a local government has failed to comply with the Act."⁶ In this
15 case, Petitioners' prehearing and reply briefs make a number of conclusory statements
16 without supporting legal argument about how the City violated specific GMA requirements.
17 For example, in Issue 1 Petitioners' Prehearing Brief cites RCW 36.70A.020(1), RCW
18 36.70A.070(3), and RCW 36.70A.110(2) and (4),⁷ and Petitioners cited GMA sections in
19 footnotes, but did not supply the Board with corresponding legal argument.
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22 For issues where Petitioners did not provide specific legal argument, nor specify
23 which statutes are alleged to be violated, the Board finds those issues to be abandoned.
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25 The allegations of violation of the following statutes, presented in the Petition for

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28 ³ RCW 36.70A.320(3).

29 ⁴ Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993).

30 ⁵ Second Prehearing Order (September 5, 2014) at 8.

31 ⁶ *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB No. 96-3-0029 (FDO, January 8, 1997), at 7.
See also *City of Bremerton v. Kitsap County*, CPSGMHB Consolidated Case No. 04-3-0009c (FDO, August 9, 2004) at 5.

32 ⁷ Petitioners' Prehearing Brief, (April 10, 2017) at 3.

1 **Review, were not briefed in Petitioners' opening brief, and the Board finds them to be**
2 **abandoned:**⁸

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4 **Petitioners' Issue 1:** RCW 36.70A.070(1) and (2), RCW 36.70A.115, RCW 36.70A.120,
5 RCW 36.70A.130(3)(a) and (b), and Whatcom County's County-Wide Planning Policies
6 (CWPPs) C-1, C-2, C-3a, C-3b, C-4, C-5, D-3, E-4, F-4, F-11, F-12, G-1 through G-4, G-6
7 and G-7.

8 **Petitioners' Issue 2:** RCW 36.70A.020(12), RCW 36.70A.070(1), (2), and (3), RCW
9 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(3)(a) and (b), and CWPPs C-1, C-2, C-3a,
10 C-3b, C-4, C-5, D-3, E-4, F-4, F-11, F-12, G-1 through G-4, G-6 and G-7.

11 **Petitioners' Issue 3:** RCW 36.70A.070(1), (2), and (3), RCW 36.70A.115, RCW
12 36.70A.120, RCW 36.70A.130(3)(a) and (b), and CWPPs C-2, C-3b, C-4, C-5, E-4, F-12, G-
13 1 through G-4, G-6 and G-7.

14 **Petitioners' Issue 4:** RCW 36.70A.020(1), (2), (4), and (5), RCW 36.70A.110, RCW
15 36.70A.115, RCW 36.70A.130, and CWPPs F-1 through F-4, F-8, F-11, and F-12.

16 **Petitioners' Issue 5:** RCW 36.70A.020(1) and (2), RCW 36.70A.070(1) and (3), RCW
17 36.70A.110, RCW 36.70A.115, RCW 36.70A.120, RCW 36.70A.130(3)(a) and (b), RCW
18 36.70A.3201 and CWPPs C-1, C-2, C-3b, C-4, C-5, G-1 through G-9, and F-11.

19 **Petitioners' Issue 6:** RCW 36.70A.020 (1), (2), (5), and (12), RCW 36.70A.070(1) and (3),
20 RCW 36.70A.110, RCW 36.70A.120, RCW 36.70A.130(3)(a) and (b), and CWPPs C-1, C-2,
21 C-3b, C-4, C-5, G-1 through G-9, and F-11.

22 **Petitioners' Issue 7:** RCW 36.70A.020 (1) through (4) and (12), RCW 36.70A.070 (1), (2),
23 and (3), RCW 36.70A.115, RCW 36.70A.130(3)(a) and (b), and CWPPs C-2, C-3b, C-4, C-
24 5, F-3, F-4, F-11, F-12, G-1 through G-4, G-6, and G-7.

25 **Petitioners' Issue 8:** RCW 36.70A.070(1), (2), and (3), RCW 36.70A.110, RCW
26 36.70A.115, and CWPPs C-1, C-2, C-3b, C-4, C-5, G-1 through G-9, F-11, and F-12.

27 **Petitioners' Issue 9:** RCW 36.70A.020(6), (10), and (12), RCW 36.70A.070(1) and (3), and
28 CWPPs C-1, through C-5, D-2, E-4, G-1 through G-4, G-6 and G-7.

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30 ⁸ See *North Clover Creek v. Pierce County*, GMHB No. 10-3-0015 (FDO, May 18, 2011) at 11: An issue was
31 abandoned when other than repeating these statutes in the statement of Legal Issue 3 petitioners have made
32 no argument tied to these provisions. WAC 242-02-570(1) provides in part "Failure to brief an issue shall
constitute abandonment of the unbriefed issue."

1 **Petitioners' Issue 10:** CWPPs B-2, C-1, C-2, C-5, D-2, D-4, and D-5.

2 **ISSUES BARRED BY COLLATERAL ESTOPPEL OR RES JUDICATA:**

3 Under the doctrine of *res judicata*, or claim preclusion, a prior judgment will bar
4 litigation of a subsequent claim if the prior judgment has a concurrence of identity with the
5 subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4)
6 the quality of the persons for or against whom the claim is made. When a subsequent
7 action is on a different claim, yet depends on issues, which were determined in a prior
8 action, the re-litigation of those issues may be barred by *collateral estoppel*. *Collateral*
9 *estoppel*, or issue preclusion, requires (1) identical issues, (2) a final judgment on the
10 merits, (3) the party against whom the plea is asserted must have been a party to or in
11 privity with a party to the prior adjudication, and (4) application of the doctrine must not work
12 an injustice on the party against whom the doctrine is to be applied. All elements must be
13 satisfied in order for the claim or issue to be barred.⁹

14 The City requests the Board apply *res judicata* and *collateral estoppel* to preclude re-
15 litigation of claims from prior proceedings before the Board.¹⁰ The City argues equitable
16 doctrines apply to Petitioners' challenges to the City's Land Capacity Analysis (LCA) and
17 UGA because "[t]he two issues were litigated in Petitioners' appeal of Whatcom County's
18 2016 comprehensive plan (CP), as the City and the County used the same City LCA and
19 the County determined the City's UGA boundary in accordance with RCW 36.70A.110(1)."¹¹
20 The Board disagrees.

21 In the Board's recent case, *Whatcom County Association of Realtors, et al. v.*
22 *Whatcom County*, the same parties were present and other criteria to meet *res judicata* and
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30 ⁹ City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 164 Wn.2d 768, 791-92, 193 P.3d 1077 (2008).

31 ¹⁰ City of Bellingham Prehearing Brief (May 1, 2017) at 7.

32 ¹¹ City of Bellingham Prehearing Brief at 7 and Whatcom County Association of Realtors, et al. v. Whatcom County, et al., GMHB No. 16-2-0007 (FDO, April 7, 2017) at 19-30. (Hereafter "Whatcom County Decision").

1 *collateral estoppel* are present.¹² However, in that case, the Board's April 7, 2017, Final
2 Decision and Order (FDO) addressed issues challenging Whatcom County Ordinance No.
3 2016-034, including the County's LCA and the UGA.¹³ However, the present petition
4 alleges GMA non-compliance of the City of Bellingham's Ordinance No. 2016-11-037, not
5 the Whatcom County Ordinance.

6
7 Here, the City failed to show that the prior FDO (issued April 7, 2017) in GMHB Case
8 No. 16-2-0007 has a concurrence of identity with the subject matter of the present case --
9 two different ordinances were challenged in the two different cases, and the issues are not
10 identical for the County and City ordinances. Thus, the elements of *res judicata* and
11 *collateral estoppel* have not been satisfied, and the City's motion is **DENIED**.

12 13 **ISSUES RAISED BY PETITIONERS**

14 **Issue No. 1**

15 Does the City's lack of adequate and/or available capital facilities within the city limits and/or
16 unincorporated areas of the Bellingham urban growth area during the 20-year planning
17 horizon (1997-2017) violate RCW 36.70A.020(12), RCW 36.70A.070(1), (2), and/or (3),
18 RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.120, RCW 36.70A.130(3)(a) and/or
19 (3)(b), and/or Whatcom County's County-Wide Planning Policies ("WCCWPP") C-1, C-2, C-
3a, C-3b, C-4, C-5, D-3, E-4, F-4, F-11, F-12, G-1 through G-4, G-6 and/or G-7?

20 **Issue No. 2**

21 Does the City's failure to include a capital facilities plan that ensures the funding and
22 construction of necessary public/urban facilities/services within the city limits and/or
23 unincorporated areas of the Bellingham urban growth area during the 20-year planning
24 horizon (2016-2036) violate RCW 36.70A.020(12), RCW 36.70A.070(1), (2), and/or (3),
25 RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.120, RCW 36.70A.130(3)(a) and/or
26 (3)(b), and/or WCCWPP C-1, C-2, C-3a, C-3b, C-4, C-5, D-3, E-4, F-4, F-11, F-12, G-1
through G-4, G-6 and/or G-7?

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30 ¹² Whatcom County Association of Realtors, Building Industry Association of Whatcom County, Whatcom
31 Affordable Housing Group, South Yew Street Group, Citizens' Alliance for Property Rights, and Whatcom
Business Alliance, as well as, Respondent Whatcom County and Intervenor City of Bellingham.

32 ¹³ *Whatcom County Decision* at 19, 24, and 27.

1 **Applicable Law**

2 **RCW 36.70A.020 (1)** Urban growth. Encourage development in urban areas where
3 adequate public facilities and services exist or can be provided in an efficient manner.

4 **RCW 36.70A.070 (3)** A capital facilities plan element consisting of: (a) An inventory of
5 existing capital facilities owned by public entities, showing the locations and capacities of
6 the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the
7 proposed locations and capacities of expanded or new capital facilities; (d) at least a six-
8 year plan that will finance such capital facilities within projected funding capacities and
clearly identifies sources of public money for such purposes...

9
10 **RCW 36.70A.110 (2)** Based upon the growth management population projection made for
the county by the office of financial management, the county and each city within the county
11 shall include areas and densities sufficient to permit the urban growth that is projected to
12 occur in the county or city for the succeeding twenty-year period, except for those urban
13 growth areas contained totally within a national historical reserve. As part of this planning
14 process, each city within the county must include areas sufficient to accommodate the broad
15 range of needs and uses that will accompany the projected urban growth including, as
appropriate, medical, governmental, institutional, commercial, service, retail, and other
16 nonresidential uses...

17 **(4)** In general, cities are the units of local government most appropriate to provide urban
18 governmental services. In general, it is not appropriate that urban governmental services be
19 extended to or expanded in rural areas except in those limited circumstances shown to be
20 necessary to protect basic public health and safety and the environment and when such
services are financially supportable at rural densities and do not permit urban development.

21 **RCW 36.70A.120** Each county and city that is required or chooses to plan under RCW
22 36.70A.040 shall perform its activities and make capital budget decisions in conformity with
23 its comprehensive plan.

24 **Positions of the Parties**

25 In Issues 1 and 2, Petitioners claim the City failed to accommodate urban growth
26 projected to occur for the preceding twenty-year period (1996-2016) in violation of RCW
27 36.70A.020(1), .070(3), .110(2) and (4) and .120.¹⁴ They maintain the "City fail[ed] to
28 provide capital facilities within the twenty-year planning horizon"¹⁵ and these infrastructure
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31 ¹⁴ Petitioners' Prehearing Brief (April 11, 2017) at 3-6.

32 ¹⁵ Id.

1 “deficiencies identified ...are within the boundaries that were originally drawn in 1996 and
2 still exist at the end of the twenty-year planning horizon as the area was defined in 1996.”¹⁶

3 Petitioners argue:

4 ...the City is obligated to ensure there are adequate and available capital
5 facilities within the twenty-year planning horizon (for 2016-2036). RCW
6 36.70A.120 states each city “shall perform its activities and make capital
7 budget decisions in conformity with its comprehensive plan.”¹⁷ ... [t]here are
8 several citations to current or anticipated deficiencies within the current
9 twenty-year planning horizon (2016-2036) in the capital facilities plans...¹⁸
[t]here is no definitive resolution or plan for these deficiencies.¹⁹

10 Petitioners conclude the City violated the GMA and Countywide Planning Policies (CWPPs)
11 by “not providing capital facilities to support urban growth for the current twenty-year
12 planning horizon.”²⁰

13
14 The City asserts Petitioners’ claims fail because Petitioners do not cite to maps or
15 text from the 2016 challenged Ordinance and instead rely on text and maps from the
16 previous, recently repealed 1997-2017 CP. The City argues Petitioner’s “cannot challenge
17 City capital facilities policies years after the City enacted those policies.” They argue
18 Petitioners’ challenge to “planning for the last 20 years is untimely... [t]he 20-year planning
19 period for this CP, including capital facilities, is 2016-2036.”²¹ The City also argues
20 Petitioners do not make legal arguments explaining where and how “RCW 36.70A.020(12),
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23 ¹⁶ *Id.* at 6.

24 ¹⁷ *Id.* at 7.

25 ¹⁸ *Id.* at 7. See Ex. SFP38, Section 3.2.4, at 3-6 (James Street Pump Station: “by the 20-year planning horizon,
26 capacity expansion will be necessary”), Section 3.2.9, at 3-9 Balsam Lane (“it does not currently have
adequate capacity to meet the combined PHD and fire flow requirement. This deficiency will increase as
27 growth continues in the 730 Alabama Hill Pressure Zone”); Section 3.6, at 3-21, Summary of Pumping and
Storage Deficiencies (“The timing and pace of development in these areas is uncertain at this time.”). Ex.
28 SFP33, Sheets 1-5 Deficiencies Maps. Ex. SFP41 at 4-3 through 4-15 (including Figure 4-12), (Sections 4.3 –
4.8). “After a review of deficiencies identified in the model, a number of improvements are recommended...
29 some of these recommendations are carried over from the 2009 Plan.” at 4-5; “the greatest concern in the field
is with the 8-inch pipes along the Guide Meridian Road between Horton Road and Bakerview Road due to the
30 capacity of the pipes.” at 4-15.

31 ¹⁹ *Id.* at 7.

32 ²⁰ City of Bellingham Prehearing Brief at 6-7.

²¹ *Id.* at 8 and see also Ex. CP02, Land Use Chapter at 30-31, Housing Chapter at 13, Capital Facilities
Chapter at 1.

1 .070(3), .110(2) and (4), .115, and .130(3)(a) and (b) require the City to ensure that capital
2 facilities are actually physically in place throughout the entire UGA during the initial 20-year
3 planning period regardless of the level of development.”²² The City lists several reasons
4 why properties were not developed and, subsequently, were not supplied urban services.²³
5 For Issue 2, which focuses on the current planning period 2016-2036, the City argues
6 Petitioners fail to offer “specific factual and legal argument explaining how these [alleged]
7 deficiencies noted in the City's own plans violated their [Petitioners'] laundry list of statutes
8 and CWPPs.”²⁴ The City contends Issue 2 must be abandoned, as Petitioners make no
9 legal argument to substantiate their Issue 2 claims.²⁵ The City argues it met GMA Capital
10 Facilities requirements in RCW 36.70A.070(3) and these are reflected in the City's 2009
11 Comprehensive Sewer Plan, 2009 Comprehensive Water System Plan, 2013 Water System
12 Plan Update, and 2007 Stormwater Comprehensive Plan incorporated by reference into the
13 Capital Facilities Chapter.²⁶
14
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16 **Board Analysis**

17 As to Issue 1, Petitioners' Prehearing Brief incompletely quoted RCW 36.70A.110(2),
18 leaving out the key statutory words that “the county” shall include “areas and densities
19 sufficient to permit the urban growth” when the county takes legislative action to designate
20 an Urban Growth Area. This omission is significant because Petitioners' Prehearing Brief
21 suggests that it is the City's responsibility to designate an UGA, whereas the GMA provides
22 that the city and county collaborate on the UGA but it is the county's statutory responsibility
23 to take legislative action to designate the UGA.²⁷
24
25

26 Petitioners also claimed under Issue 1 that the City was required to complete its
27 capital facilities plan implementation within the ***past*** 20 years and since that 20-year
28

29 ²² City of Bellingham Prehearing Brief at 9-10.

30 ²³ *Id.* at 9.

31 ²⁴ *Id.* at 10.

32 ²⁵ *Id.* at 11.

²⁶ Ex. CP02, Capital Facilities Chapter at 6-7.

²⁷ Petitioners' Prehearing Brief at 3.

1 planning period has expired, “If the City has failed to accommodate for the urban growth
2 projected to occur in the city for the preceding twenty-year period this would be a clear
3 violation of the GMA.”²⁸ What exactly is clearly violated? Instead of offering a legal
4 argument, Petitioners made only an unsupported conclusory statement that the City’s failure
5 “to provide for urban levels of service to accommodate for urban levels of development
6 within the twenty-year planning horizon that has now expired . . . is in violation of the
7 GMA.”²⁹

8
9 Under Issues 1 and 2, Petitioners make multiple references to ***past*** deficiencies in
10 capital facilities planning but Petitioners failed to show how identified language in the
11 currently challenged *Ordinance No. 2016-11-037* violates specific provisions of the GMA.
12 Petitioners’ burden is to prove that *Ordinance No. 2016-11-037* failed to properly address
13 these alleged pre-existing capital facilities deficiencies. Petitioners claim the City was
14 obligated to implement in full the City’s 1996 Capital Facilities Plan, but do not cite specific
15 GMA sections requiring a jurisdiction to do so. For Issue 1, the Board finds that Petitioners
16 failed to provide evidence of non-compliance as to *Ordinance No. 2016-11-037* with any
17 GMA statute; in any event the challenge to the 1996 Capital Facilities Plan is untimely
18 because the 1996 CP was repealed and replaced with the 2016 CP.
19

20 For Issue 2, the Board finds the Petitioners did not prove that the City failed to
21 complete the required sections of RCW 36.70A.070(3) when it adopted its 2016 capital
22 facilities plan element which consists of an inventory, a forecast, proposed locations and “at
23 least a six-year plan that will finance such capital facilities within projected funding
24 capacities and clearly identifies sources of public money for such purposes.”
25

26 The Board also reviews Petitioners’ citation to *McVittie v. Snohomish County*,
27 CPSGMHB No. 00-3-0006c to substantiate their claim that “the GMA requires cities and
28 counties to ensure adequate and available urban levels of service within the twenty-year
29

30
31 ²⁸ Citation from Petitioners’ Prehearing Brief at 5: “Specifically, sections 36.70A.020(12), .070(3), .110(2), (4),
32 .115, and .130(3)(a) and (b) as well as the CWPPs cited in the issue statement above.”

²⁹ Petitioners’ Prehearing Brief at 6.

1 planning horizon.”³⁰ That case does not support the Petitioners’ arguments. In short, the
2 Board found that Snohomish County complied with the GMA, emphasizing that the County
3 has a discretionary choice about how and when it fully builds out its capital facilities.

4 The choice of what is funded during a six-year financing plan cycle is a
5 discretionary choice of the County. ***It is not for Petitioner to decide which***
6 ***projects are to be funded in a six-year cycle.*** So long as the needs
7 identified in the CFE are reflected in the CIP, the scheduling of their
8 implementation, ***including the delay of project to later years, is a***
9 ***discretionary choice of the County.*** However, the County should be mindful
10 that those needs identified in the 20-year Plan (CFE), ultimately must be
11 addressed (funded and implemented) at some point during the original 20-
12 year life of the Plan. Nonetheless, Petitioner has ***failed to show a shortfall***
13 ***in funding in the CIP.*** Since Petitioner failed to demonstrate a shortfall in
funding, Petitioner’s challenge to the reassessment provisions of the GMA is
not applicable.³¹ (Emphasis added)

14 **Under Issues 1 and 2, the Board finds and concludes that Petitioners failed to satisfy**
15 **their burden of proof to demonstrate that City Ordinance 2016-11-037 amending the**
16 **City’s Comprehensive Plan is clearly erroneous. Issues 1 and 2 are dismissed.**

18 **Issue No. 3**

19 Does the City’s failure to establish meaningful and measurable levels of services for
20 public/urban facilities/services violate RCW 36.70A.020(12), RCW 36.70A.070(1), (2), and/or
21 (3), RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.120, RCW 36.70A.130(3)(a) and/or
22 (3)(b), and/or WCCWPP C-2, C-3b, C-4, C-5, E-4, F-12, G-1 through G-4, G-6, and/or G-7?

23 **Applicable Law**

24 **RCW 36.70A.020 Planning goals** (12) Public facilities and services. Ensure that those
25 public facilities and services necessary to support development shall be adequate to serve
26 the development at the time the development is available for occupancy and use without
27 decreasing current service levels below locally established minimum standards.

31 ³⁰ Petitioners’ Prehearing Brief at 4.

32 ³¹ McVittie v. Snohomish County, CPSGMHB Case No. 00-3-0006c at 15.

1 **Positions of the Parties**

2 Petitioners claim RCW 36.70A.020 (12) requires the City to establish levels of service
3 for urban services and facilities, but argue the City's capital facilities chapter contains
4 "confusing and misleading statements regarding the minimum levels of service for several
5 capital facilities."³² Petitioners cite examples of confusing level of service provisions for
6 police protection, water supply and storm/wastewater,³³ concluding that the "City's refusal to
7 adopt minimum levels of service that are "clearly labeled" for their capital facilities is a
8 violation of the GMA and is clearly erroneous."³⁴
9

10 The City responds that Petitioners cannot claim a GMA goal was violated without
11 also showing a substantive violation of a GMA requirement. The City claims Petitioners'
12 "...Brief fails to discuss any citation except RCW 36.70A.020(12)"³⁵ and requests the Board
13 to evaluate "whether or not the City complied with [a] GMA goal [and] the Board needs to
14 consider how the City complied with GMA requirements that support Goal 12."³⁶ The City
15 elaborates on what the Board has previously required to comply with Goal 12:
16

17 Compliance with Goal 12 requires local governments to adopt either policies
18 or regulations or a combination that provide reasonable assurances, but not
19 absolute guarantees that the locally defined (within the perimeters of the Act)
20 public facilities and services necessary for future growth are adequate within
21 previously established [level of service] LOS levels to serve that new growth
22 either at time of occupancy and use, or within an appropriately timed phasing
23 of growth connected to a clear and specific funding strategy.³⁷
24
25

26 ³² Petitioners' Prehearing Brief at 8 Ex. CP02, Capital Facilities and Utilities Chapter.

27 ³³ *Id.* at 9.

28 ³⁴ Specifically, RCW 36.70A.020(12), .110, .115, .120, .130(3)(a) and (b) as well as the CWPPs cited in the
29 issue statement above.

30 ³⁵ City of Bellingham Prehearing Brief at 12. See also Petitioners' Prehearing Brief at 7-10. Footnote 37 at 10
31 of the Brief cites to "RCW 36.70A.020(12), .110, .115, .120, .130(3) and (b) as well as the CWPPs cited in the
32 issue statement above."

³⁶ *Id.* at 13.

³⁷ *Id.* See also *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002
(FDO, July 16, 1996) at 9.

1 The City then explains they have completed this work and have level of service policies for
2 sewer, water, stormwater in sections of its Capital Facilities Plan.³⁸ The City also explains
3 that level of service is not always defined in the same manner and describes the way in
4 which level of service (LOS) can be expressed in “appropriate measure of need” depending
5 on the service provided.³⁹
6

7 **Board Analysis**

8 Legislative intent regarding LOS is addressed in three parts of the GMA: Goals (RCW
9 36.70A.020(12); Rural Lands (RCW 36.70A.011) and Mandatory Elements for transportation
10 (RCW 36.70A.070(6)). LOS is further defined in WAC 365-196-210 (19) “Level of service
11 means an established minimum capacity of public facilities or services that must be
12 provided per unit of demand or other appropriate measure of need. Level of service
13 standards are synonymous with locally established minimum standards.”
14

15 Petitioners allege noncompliance with the “level of service” in GMA Goal 12;
16 however, Petitioners’ allegations are not tied to any substantive requirements of the GMA.⁴⁰
17 Thus, the narrow issue raised here is whether “the development of comprehensive plans
18 and development regulations” was **guided by** planning Goal 12. For this goal, Petitioners
19 must provide facts showing how the City’s adopted plan was not guided by adopted LOS,
20 but here Petitioners only state the City’s LOS are confusing and misleading.
21

22 The record shows the City established policies and specific service level
23 requirements for urban services. The City’s Capital Facilities Chapter Policy CF-2 requires
24 the City to supply adequate public facilities and services at the time a development project is
25

26 ³⁸ Ex. CP02, Capital Facilities Chapter at 4. See also City of Bellingham’s Prehearing Brief at 13-14 including
27 Bellingham Municipal Code (Appendix A); Ex. SFP35 (City’s 2009 Comprehensive Water Plan) at 1.21.2 and
28 1.22.2; Ex. SFP34 (City 2009 Comprehensive Sewer Plan) at 4-13; Ex. CP02, Capital Facilities Chapter at 17.

29 ³⁹ City of Bellingham Prehearing Brief at 14.

30 ⁴⁰ Although not raised as an issue in the present case, the Board notes that our Supreme Court recently
31 explained the difference between GMA planning goals and GMA substantive requirements: “*Nothing in this*
32 *plain language suggests that GMA goals impose substantive requirements on local governments . . . [we] have*
never held that local governments are bound by these goals in addition to the enumerated requirements of the
Act.” *Whatcom County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 186 Wn.2d 648, 689-690 (2016). See also
Quadrant Corp. v. Hearings Bd., 154 Wn.2d 224, 245-247 (2005).

1 ready for occupancy.⁴¹ This policy, along with corresponding Bellingham Municipal Codes,
2 ensures that the City meets its obligations under the GMA to supply water, sanitary sewer,
3 storm-water controls, and transportation systems.⁴² For one example, Petitioners complain
4 that the police department LOS “statements do not definitively state the minimum level of
5 service for this capital facility/service as required by the GMA.”⁴³ The record shows the City
6 analyzed its police staffing, found a shortfall, and that the City plans to bring its police force
7 up “to adequate staffing levels to meet the adopted LOS standards”⁴⁴ Petitioners have
8 failed to present evidence showing that Ordinance 2016-11-037 was not guided by the
9 statutory goal in RCW 36.70A.020(12) regarding adequate public facilities and services.
10

11 In footnote 37, on page 10 of Petitioners’ Prehearing Brief, Petitioners allege
12 violations of numerous RCW sections and countywide planning policies without providing
13 any supporting legal argument in the text of their brief.
14

15 Lastly, Petitioners argue the Board’s *Wilma* decision requires more detailed and
16 clearer LOS standards in the CP. Petitioners’ reliance upon *Wilma* is misplaced because the
17 case speaks to the County’s complete ***lack of level of service standards***.

18 The Board has already found the County out of compliance in Issue No. 2 for
19 not having an adequate capital facilities plan for all public facilities and
20 services with a financing plan to support it. Now we find that the County in its
21 CP has not adequately provided for locally defined public facilities and
22 services through policies or regulations or a combination thereof that provide
23 reasonable assurances that new growth will be served as required by RCW
24 36.70A.020(12). ***Without designated level of services for public facilities
25 and services, the County can’t even determine what is necessary to
26 ensure adequate public facilities and services, let alone ensure they will
27 be available for new growth.***⁴⁵ (Emphasis added)

28 Upon review of the County’s CFP, the Board finds that, for all intents and
29 purposes, the CFP fulfills only the very basic needs required by the GMA for a
30 capital facilities plan, and primarily, those needs are addressed by other
31

32 ⁴¹ City of Bellingham Prehearing Brief at 13 and Ex. CP02, Capital Facilities Chapter, Policy CF-2 at 4.

⁴² Bellingham Municipal Code (BMC) 18.12.040; BMC 18.20.080; BMC 15.12.040 E. and 15.12.020.

⁴³ Petitioners’ Prehearing Brief at 8-9.

⁴⁴ Ex. CP02, Capital Facilities Chapter, Law Enforcement Services at 14-15.

⁴⁵ *Wilma*, GMHB No. 06-1-0009c (FDO, March 12, 2006).

1 providers, such as the fire and school districts. ...Unfortunately, the **CFP fails**
2 **to provide proposed locations and capacities of expanded or new**
3 **capital facilities**, such as the jail, and determines that sidewalks, traffic
4 signals, and lighting systems do not presently exist in the County, so no
5 planning is necessary for future service. Therefore, the Board finds that
6 Stevens County's CFP, by not including all of the required elements, fails to
7 comply with RCW 36.70A.070(3).⁴⁶ (Emphasis added)

8 **The Board finds and concludes that Petitioners failed to carry their burden of proof to**
9 **show that City Ordinance 2016-11-037 was not "guided by" the planning goal to**
10 **"Ensure that those public facilities and services necessary to support development**
11 **shall be adequate to serve the development at the time the development is available**
12 **for occupancy and use without decreasing current service levels below locally**
13 **established minimum standards." Issue 3 is dismissed.**

14 **Issue No. 4**

15 Does the City's failure to adopt and/or follow a consistent annexation phasing plan for lands
16 the City contends are "buildable" and on which the City relies on to meet its population,
17 housing, and economic goals violate RCW 36.70A.020(1), (2), (4) and/or (5), RCW
18 36.70A.110, RCW 36.70A.115, RCW 36.70A.130 and WCCWPP F-1 through F-4, F-8, F-11
19 and/or F-12?

20 **Applicable Law**

21 **RCW 36.70A.110 (4)** In general, cities are the units of local government most appropriate to
22 provide urban governmental services. In general, it is not appropriate that urban
23 governmental services be extended to or expanded in rural areas except in those limited
24 circumstances shown to be necessary to protect basic public health and safety and the
25 environment and when such services are financially supportable at rural densities and do
26 not permit urban development.

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32 ⁴⁶ *Wilma*, GMHB No. 06-1-0009c (Compliance Order, May 22, 2008).

Positions of the Parties

Petitioners contend the City agreed to be responsible for capital facilities and urban levels of service within the entire Bellingham UGA⁴⁷ and they state that “providing for this level of facilities/services is consistent with the GMA, RCW 36.70A.110(4).”⁴⁸ Petitioners assert the City’s “Annexation Phasing Plan is confusing at best and unfair at worst” and this plan, which has a “self-imposed condition precedent (Annexation Phasing Plan)” is not supported by the GMA or case law.⁴⁹ Petitioners conclude the “City’s refusal to provide urban levels of service to support development within the city limits and the Bellingham UGA is a violation of the GMA and is clearly erroneous.”⁵⁰ The City responds that Petitioners “fail to reference, with legal argument, the specific GMA statutes Petitioners allege... to have been violated... Petitioners have abandoned Issue 4, and the Board should dismiss the issue.”⁵¹ The Board agrees.

Board Analysis

Under Issue 4, Petitioners fail to make legal arguments about how the City’s Annexation Phasing Plans violate the GMA. They reference RCW 36.70A.110(4), but do not provide legal arguments describing *how* the City violated this GMA provision. Petitioners have not demonstrated that the City violates this statute. As the City’s brief states, “the GMA neither defines an “annexation phasing plan” nor requires the City “to adopt and/or follow a consistent annexation phasing plan.”⁵² The Petitioners offer no legal argument that the City’s Annex Phasing Plan violates the GMA. In footnote 51, on page 12 of Petitioners’ Prehearing Brief, Petitioners allege violations of numerous RCW sections and CWPPs

⁴⁷ Petitioners’ Prehearing Brief at 10-11 and Ex. WC04, at 7: “The City will develop and maintain capital facility plans...to provide urban levels of water and sewer service within the UGA upon annexation.”

⁴⁸ *Id.* and see also RCW 36.70A.110(4) “In general, cities are the units of local government most appropriate to provide urban governmental services.”

⁴⁹ Petitioners’ Prehearing Brief at 12.

⁵⁰ *Id.* at 12 and See Petitioners’ Footnote stating “Specifically, RCW 36.70A.020(1), (2), (4), (5), .110, .115, .130 as well as the CWPPs cited in the issue statement above.”

⁵¹ City of Bellingham Prehearing Brief at 15 and *Whatcom County Decision* at 4-5.

⁵² City of Bellingham Prehearing Brief at 15.

1 without providing any supporting legal argument in the text of their brief. **The Board finds**
2 **and concludes Petitioners have failed to carry their burden of proof demonstrating**
3 **City Ordinance 2016-11-037 is clearly erroneous in regards to annexation phasing**
4 **plans as alleged in Issue 4. Issue 4 is dismissed.**
5

6 **Issue No. 5**

7 Does the City's failure to conduct a complete housing demand analysis despite public
8 comment from the general public and housing professionals requesting such analysis
9 including current housing needs, an analysis of housing for various economic segments,
10 housing preferences, housing affordability, and built densities violate RCW 36.70A.020(1),
11 (2), and/or (4), RCW 36.70A.070(1), (2), and/or (3), RCW 36.70A.110, RCW 36.70A.115,
12 RCW 36.70A.120, RCW 36.70A.130(3)(a) and/or (3)(b), RCW 36.70A.3201 and/or
WCCWPP C-1, C-2, C-3b, C-4, C-5, G-1 through G-9, and/or F-11?

13 **Applicable Law**

14 **RCW 36.70A.070 (2) Comprehensive plans—Mandatory elements.** A housing element
15 ensuring the vitality and character of established residential neighborhoods that:
16 (a) Includes an inventory and analysis of existing and projected housing needs that
17 identifies the number of housing units necessary to manage projected growth;
18 (b) includes a statement of goals, policies, objectives, and mandatory provisions for the
19 preservation, improvement, and development of housing, including single-family residences;
20 (c) identifies sufficient land for housing, including, but not limited to, government-assisted
21 housing, housing for low-income families, manufactured housing, multifamily housing, and
22 group homes and foster care facilities; and
(d) makes adequate provisions for existing and projected needs of all economic segments
of the community.

23 **Position of the Parties**

24 Petitioners contend the City "largely ignored data submitted during the
25 comprehensive plan update process regarding the absolute need for more detached single
26 family residences within the Bellingham UGA."⁵³ Further, they claim the City's LCA and
27 BERK Consulting reports are inadequate because the LCA "occupancy rates are "best
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32 ⁵³ Petitioners' Prehearing Brief at 13.

1 available data from OFM and/or the US Census;⁵⁴ the reports are from 2010;⁵⁵ and the
2 consulting report “fails to use any current information regarding the dismal vacancy rate.”⁵⁶
3 Petitioners concluded “the City has planned for a projected need of 51% multifamily⁵⁷...
4 [t]his shows the City’s complete lack of consideration for current needs or future
5 needs⁵⁸...[and the City] failed to inventory and analyze current housing needs in violation of
6 the plain language of the GMA, specifically, RCW 36.70A.070...[and the City] violated the
7 GMA by not ensuring affordability for all economic segments, particularly for low-income
8 families.”⁵⁹

9
10 The City responds that “the record shows that the City considered this data submitted
11 by Petitioners in its decision making process... [and] the City’s LCA and 2016 CP did not
12 ignore the need for single-family housing.”⁶⁰ The City asserts it had the option to make “...a
13 policy choice, based on extensive community input, to encourage compact development
14 through infill and mixed-use, walkable urban villages, in lieu of recommending a higher
15 population allocation and expanding the UGA. Neither the City, nor the County, who
16 accepted the City’s recommendation, can be faulted for furthering the very concepts upon
17 which the GMA was built.” (WAC 365-196-310(3)(f)).⁶¹
18
19

20 ⁵⁴ *Id.* at 14 See also Ex. WC17: “Whatcom County Planning and Development Services staff and planners
21 from each city developed and completed the LCA to estimate each UGA’s capacity for population and
22 employment growth during the 20-year planning period for the County and city 2016 comprehensive plan
updates.” at 1, 12, and 13.

23 ⁵⁵ *Id.* at 13 and see also Ex. WC17 Appendix C “Source...OFM 2010 housing data”.

24 ⁵⁶ *Id.* at 14 and see also Ex. CP02, Land Use Chapter, at 30-31; Ex. WC06.

25 ⁵⁷ Ex. CP02, Housing Chapter: “Approximately 44% of the current housing stock in Bellingham is multi-family.
The projected mix (i.e., current mix + growth), which is based on current zoning and the land capacity analysis,
is 49% single-family and 51% multi-family. This split not only supports the City’s growth strategy, but also
26 provides options for changing demographics.” at 4.

27 ⁵⁸ *Id.* at 14.

28 ⁵⁹ *Id.* at 15.

29 ⁶⁰ City of Bellingham Prehearing Brief at 17-18 “The City’s Housing Chapter estimates that nearly 4,800 new
single-family homes will be built during the 20-year planning period. This equates to 240 new single-family
homes per year, which is a 175% increase over the average 138 single-family homes per year permitted in
Bellingham over the previous 12 year period 2004-2015.” Ex. CP02, Housing Chapter at 13 (Land Capacity
Analysis, Population & Housing Breakout) and (New Residential Units Permitted in Bellingham).

31 ⁶¹ City of Bellingham Prehearing Brief at 18, WAC 365-196-310(3)(f), “[c]ounties and cities should develop and
evaluate urban growth area proposals with the purpose of accommodating projected urban growth through
32 infill and redevelopment within existing municipal boundaries or urban areas . . .

1 **Board Analysis**

2 As this Board has opined in previous decisions,⁶² RCW 36.70A.070(2) requires cities
3 to inventory and analyze existing and projected housing needs; adopt goals and policies to
4 preserve and develop housing, including single-family residences; identify land for housing;
5 and make housing provisions for all economic segments of the community. The record
6 shows the City's 2016 CP Housing Chapter contains all such requirements found in RCW
7 36.70A.070(2) as demonstrated in the City's analysis of growth targets, demographics,
8 housing tenure, housing affordability, and incentives.⁶³

9
10 Petitioners claims "the City has largely ignored data submitted during the
11 comprehensive plan update process regarding the absolute need for more detached single
12 family residence,"⁶⁴ but this argument is unfounded because, although, they cite data about
13 affordability, their main argument is about consumer preferences for single-family homes.
14 The GMA does not require local jurisdictions to consider residents' preferences. Further,
15 the record shows the City reviewed and considered Petitioners' information when the data
16 was presented to the City's Committee of the Whole.⁶⁵ The Petitioners fail to convince the
17 Board the City ignored information about the need for single family homes. The record
18 shows the City made a policy choice to strive for more compact development in accordance
19 with the overall goals of the GMA:
20

21 Neither the City, nor the County, who accepted the City's recommendation,
22 can be faulted for furthering the very concepts upon which the GMA was built.
23 As stated in WAC 365-196-310(3)(f), "[c]ounties and cities should develop
24 and evaluate urban growth area proposals with the purpose of
25 accommodating projected urban growth through infill and redevelopment
26 within existing municipal boundaries or urban areas . . ." ⁶⁶
27
28
29

30 ⁶² *Stickney v. City of Sammamish*, GMHB No. 15-2-0017 (FDO, June 13, 2016).

31 ⁶³ Ex. CP 02 Housing at 13-21.

32 ⁶⁴ Petitioners' Prehearing Brief at 13.

⁶⁵ Ex. CCP17 at 3, 10, and 11; Ex. CCP10 at 4-10; Ex. CCAB10 at 3-5 and 7; Ex. CCAB04 at 3-5.

⁶⁶ City of Bellingham Prehearing Brief at 18.

1 Petitioners also claim the City adopted a flawed LCA Report because the City failed
2 to use current information on vacancy rates.⁶⁷ Petitioners argue that because “the City
3 ...failed to inventory and analyze current housing needs in violation of the plan language of
4 the GMA, specifically, RCW 36.70A.070... [t]his failure, in turn, leads to inaccurate and
5 misleading projections regarding housing needs in the future which affects the calculation of
6 land capacity needed to accommodate for such growth.”⁶⁸ Similar to the Board’s analysis in
7 the recent *Realtors v. Whatcom County*⁶⁹ case, the Board finds here that Petitioners have
8 not met their burden of proof in challenging the City’s housing demand analysis.
9

10 Petitioners have the burden to point to specific language in the challenged ordinance
11 that fails to analyze existing and projected housing needs and fails to make adequate
12 provisions for existing and projected needs of all economic segments of the community.
13 The record shows the City completed the Housing Element in accordance with the GMA,
14 and Petitioners failed to identify any specific language in the Housing Element adopted by
15 Ordinance 2016-11-037 that violated the standards in RCW 36.70A.070(2). **The Board
16 finds and concludes Petitioners failed to carry their burden of proof demonstrating
17 that City Ordinance 2016-11-037 was clearly erroneous in regards to the City’s
18 Housing Element. Issue 5 is dismissed.**
19
20

21 **Issue No. 6**

22 Does the City’s lack of a land supply and public/urban facilities/services analysis to meet
23 both existing and projected needs of all economic segments of a community violate RCW
24 36.70A.020(1), (2), (4), (5) and/or (12), RCW 36.70A.070(1), (2), and/or (3), RCW
25 36.70A.110, RCW 36.70A.115, RCW 36.70A.120, RCW 36.70A.130(3)(a) and/or (3)(b),
26 and/or WCCWPP C-1, C-2, C-3b, C-4, C-5, G-1 through G-9, and/or F-11?
27

28 ⁶⁷ Petitioners’ Brief at 14. See also Ex. WC17: “Whatcom County Planning and Development Services staff
29 and planners from each city developed and completed the LCA to estimate each UGA’s capacity for
30 population and employment growth during the 20-year planning period for the County and city 2016
31 comprehensive plan updates.” at 1.

32 ⁶⁸ *Id.* at 15.

⁶⁹ *Whatcom County Association of Realtors, Building Industry Association of Whatcom County, Whatcom
Affordable Housing Group, South Yew Street Group, Citizens’ Alliance for Property Rights, Whatcom Business
Alliance v. Whatcom County*, GMHB No. 16-2-0007.

1 **Applicable Law**

2 **RCW 36.70A.115 Comprehensive plans and development regulations must provide**
3 **sufficient land capacity for development.**

4 Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure
5 that, taken collectively, adoption of and amendments to their comprehensive plans and/or
6 development regulations provide sufficient capacity of land suitable for development within
7 their jurisdictions to accommodate their allocated housing and employment growth,
8 including the accommodation of, as appropriate, the medical, governmental, educational,
9 institutional, commercial, and industrial facilities related to such growth, as adopted in the
applicable countywide planning policies and consistent with the twenty-year population
forecast from the office of financial management.

10 **Position of the Parties**

11 Petitioners argue that because the City failed to take into consideration existing
12 housing needs and the amount of land needed to accommodate future housing growth, then
13 it follows that the City failed to consider needs of “all economic segments of a community.”⁷⁰
14 They argue the City failed to carry out requirements in RCW 36.70A.115 which should
15 “provide sufficient capacity of land suitable for development within their jurisdictions to
16 accommodate their allocated housing **and** employment growth, including the
17 accommodation of, as appropriate, the medical, governmental, educational, institutional,
18 commercial, and industrial facilities...”. Petitioners conclude “there is no evidence the City
19 factored the vacancy rate for owner-occupied homes *which is at nearly zero* into their
20 calculation of the land needed for development ...[and thus] ...[t]he lack of capital facilities
21 in areas within the city limits and the UGA directly affects whether the land can be
22 developed to urban densities.”⁷¹ The City responded to Issue 6 by referring to its response
23 in Issues 1, 2, 3, and 5.
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30 ⁷⁰ Petitioners’ Brief at 16 “This means if the Board finds the City has failed to make an “inventory and analysis”
31 of the existing housing needs as required in RCW 36.70A.020(4) and .070(2), then the natural consequence of
32 this finding is that the City’s calculation of the available (and needed) land to accommodate the current need
and projected need over the twenty-year planning period is incorrect as well.”

⁷¹ *Id.* at 17.

Board Analysis

As noted in Issue 5 above, the Board found the City met Housing Element requirements of RCW 36.70A.070(2). The Board's findings in Issue 5 also relate to Issue 6 because Petitioners claim that if the City violated the Housing Element requirements (by failing to account for single family home vacancy rates), then the City would, by definition, also fail to account for needs for all other "economic segments" in violation of RCW 36.70A.115. However, the Board found the Petitioners failed to demonstrate that the City's Housing Element was non-compliant with the GMA; thus, Petitioners' argument fails that if single family housing is not accommodated, then all other economic segments are short changed. Finally, Petitioners do not provide evidence from the record that the City failed to "provide sufficient capacity of land suitable for development..." contrary to a GMA requirement imposed on the City in RCW 36.70A.115; they simply make the claim that the City failed to do so. **The Board finds and concludes Petitioners have failed to carry their burden of proof demonstrating that City Ordinance 2016-11-037 was clearly erroneous in regards to the amount of land needed to accommodate for future growth for other economic segments. Issue 6 is dismissed.**

Issue No. 7

Does the City's failure to update its Urban Fringe Subarea Plan so that it is consistent with the Comprehensive Plan, as well as the City's attempt to correct the inconsistencies between the Urban Fringe Subarea Plan and Comprehensive Plan with a one sentence amendment introduced at the time of first reading by the City Council and not subject to public review/comments and after Whatcom County adopted its Comprehensive Plan incorporating the Urban Fringe Subarea Plan violate RCW 36.70A.020(1) through (4), and/or (12), RCW 36.70A.070(1), (2), and/or (3), RCW 36.70A.080(2), RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(3)(a) and/or (3)(b), and/or WCCWPP C-2, C-3b, C-4, C-5, F-3, F-4, F-11, F-12, G-1 through G-4, G-6, and/or G-7?

Applicable Law

RCW 36.70A.070 Comprehensive plans—Mandatory elements. (*Effective September 1, 2016.*) The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan

1 shall be an internally consistent document and all elements shall be consistent with the
2 future land use map. A comprehensive plan shall be adopted and amended with public
3 participation as provided in RCW 36.70A.140.

4 **Position of the Parties**

5 Petitioners claim the City violates RCW 36.70A.070 because the Urban Fringe Sub-
6 Area Plan (USFP) "is part of the Comp Plan and the inconsistencies between the Comp
7 Plan and the UFS are undisputed."⁷² They contest the City's "attempt to remedy this fatal
8 flaw by inserting one sentence into the Comp Plan during the first reading of the Comp Plan
9 without allowing for public comment" does not adhere to case law and is clearly erroneous
10 in violation of the GMA.⁷³ They concluded "[c]ertainly, a wholesale inclusion in the Comp
11 Plan without the allowance for comments fails to meet this requirement. As a result, the
12 City's actions are clearly erroneous and in violation of the GMA."⁷⁴

14 The City explains that the UFSP is included in the appendix to the City's 2016 CP,
15 but it is not a City subarea plan.⁷⁵ Rather it is Whatcom County's UFSP adopted in 1997
16 and amended in 1999, 2004, and 2009.⁷⁶ The City explains the County docketed the USFP
17 be updated this year.⁷⁷

19 The City explains internal inconsistencies do not exist because their CP has a
20 provision that : "[i]n the event there is an inconsistency between a subarea plan and the
21 Bellingham Comprehensive Plan, the Bellingham Comprehensive Plan shall prevail".⁷⁸

27 ⁷² Petitioners' Prehearing Brief at 18-19.

28 ⁷³ *Id.* at 19

29 ⁷⁴ *Id.* at 20 and see also *Spokane County v. EWGMHB*, 188 Wn. App. 467, 353 P.3d 680 (2015); *City of Burien v. CPSGMHB*, 113 Wn. App. 375, 53 P.3d 1028 (2002).

30 ⁷⁵ City of Bellingham Prehearing Brief at 22.

31 ⁷⁶ Ex. WC03 (Urban Fringe Subarea Plan), cover page.

32 ⁷⁷ Ex. WC19 (Settlement Agreement between Whatcom County and Jack Petree RE update to Urban Fringe Subarea Plan).

⁷⁸ *Id.* and see also Ex. CP02, Introduction at 16.

1 **Board Analysis**

2 The record shows the UFSP plan applies to land in the unincorporated area of the
3 County and this land is outside the City limits.⁷⁹ Thus, it falls upon the County to update the
4 UFSP, which it plans to do in 2017. Petitioners' assert the City's CP, including the appendix
5 with the USFP, is inconsistent with the City's CP and violates the internal plan consistency
6 requirement of RCW 36.70A.070. However, Petitioners failed to provide any evidence of an
7 inconsistency internal to the City of Bellingham's Comprehensive Plan.⁸⁰ Further, since the
8 UFSP applies to land areas outside of the City and outside of the City's planning jurisdiction,
9 Petitioners cannot prove that inconsistencies between the City CP and the County UFSP
10 violate the GMA.
11

12 The City has a process by which, in coordination with Whatcom County, the USFP
13 will be updated⁸¹ and Petitioners have not identified how this process violates the GMA.
14 Petitioners have not pointed to evidence showing how the City's CP is inconsistent with the
15 County's plan. **The Board finds and concludes Petitioners fail to carry their burden of**
16 **proof demonstrating that City Ordinance 2016-11-037 is clearly erroneous. Issue 7 is**
17 **dismissed.**
18
19

20 **Issue No. 8**

21 Does the City's refusal to address and/or correct deficiencies regarding existing housing,
22 economic, and environmental needs in the Neighborhood Plan elements for the 20-year
23 planning period (2016-2036) violate RCW 36.70A.020(1), (2), and/or (4), RCW
24 36.70A.070(1), (2), and/or (3), RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.120,
25 RCW 36.70A.130(3)(a) and/or (3)(b), and/or WCCWPP C-1, C-2, C-3b, C-4, C-5, G-1
through G-9, F-11 and/or F-12?

26 **Applicable Law**

27 **RCW 36.70A.070 (3)** A capital facilities plan element consisting of:

28 (a) An inventory of existing capital facilities owned by public entities, showing the locations
29 and capacities of the capital facilities;

30 ⁷⁹ Ex. WC03 at 26.

31 ⁸⁰ Petitioners' Prehearing Brief at 18.

32 ⁸¹ EX WC03 at 1 and 3 "Amendment – Update to the Whatcom County Comprehensive Plan for the Urban Fringe Subarea Including the portion of Bellingham's Northern Urban Growth Area"

1 (b) a forecast of the future needs for such capital facilities;
2 (c) the proposed locations and capacities of expanded or new capital facilities;
3 (d) at least a six-year plan that will finance such capital facilities within projected funding
4 capacities and clearly identifies sources of public money for such purposes; and
5 (e) a requirement to reassess the land use element if probable funding falls short of meeting
6 existing needs and to ensure that the land use element, capital facilities plan element, and
7 financing plan within the capital facilities plan element are coordinated and consistent. Park
8 and recreation facilities shall be included in the capital facilities plan element.

9 **Position of the Parties**

10 Petitioners allege deficiencies in the City's Neighborhood Plans regarding water,
11 stormwater and sewer provisions and that these deficiencies are "not articulated in the
12 capital facilities plan of the City."⁸² Petitioners argue in footnote 86 of their brief that "RCW
13 36.70A.070(3) requires cities to include in their capital facilities plan element the "location
14 and capacities" of the capital facilities as well as a "forecast of future needs for such capital
15 facilities..."⁸³ Petitioners conclude the "City is required to ensure the deficiencies in the
16 Neighborhood Plans have been accounted for and will be addressed within the twenty-year
17 planning horizon."⁸⁴

18 The City responds neighborhood plans are subarea plans to the City's CP and none
19 of the "text or maps adopted by City Ordinance 2016-11-037 amended the City's 25
20 neighborhood plans, including that Samish and South Neighborhood Plans."⁸⁵ The City
21 explains that neighborhood plans are written with the assistance of citizens living in the
22 neighborhood, have a narrative description, and are considered subarea plans to the City's
23 CP, but the City does not use neighborhood plans, for utility planning."⁸⁶ Instead, the City
24 developed their 2013 Water System Plan Update to provide an analysis of "future water
25 infrastructure needs in the City, including the Samish and South Hill Neighborhoods....[and]
26 Section 3.7 of the Plan Update describes the needed water system improvements and
27
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30 ⁸² Petitioner's Prehearing Brief at 20.

31 ⁸³ *Id.* at 21 Footnote 86.

32 ⁸⁴ Goals 1, 2 and 4 of the GMA; RCW 36.70A.120. See also Issue #2 discussed above.

⁸⁵ City of Bellingham Prehearing Brief at 23-24.

⁸⁶ *Id.* at 24 and see also BMC 20.20.010.

1 timing of these future projects based on growth.”⁸⁷ The City responds that Petitioners have
2 not made specific legal arguments showing how the City violated GMA.

3 4 **Board Analysis**

5 In the text of their briefing for Issue 8, Petitioners did not cite any RCWs nor offer any
6 specific legal arguments demonstrating how the Neighborhood Plans for Samish and South
7 Hill Neighborhood Plans violate RCW 36.70A.070(3), referenced cited only in footnote 86.

8 The Board finds that by failing to address the issue or provide legal argument, Petitioners
9 have abandoned this issue.⁸⁸ **The Board finds and concludes Petitioners failed to brief**

10 **Issue 8 and deems this issue abandoned. Issue 8 is dismissed.**

11 12 **Issue No. 9**

13 Do flaws in the City’s Land Capacity Analysis, including, but not limited to, failing to properly
14 account for critical areas, buffers, and setbacks, including Tribal Land over which the City of
15 Bellingham has no regulatory control or authority, use of substantially inflated and
16 unrealistic capacity projections for population and employment, failing to analyze industrial
17 lands beyond the 20-year planning horizon, failing to properly account for the arbitrarily high
18 permission costs associated with development, and overreliance on urban villages despite
19 evidence of their underperformance violate RCW 36.70A.020(1), (2), (4), (6), (10), and/or
20 (12), RCW 36.70A.070(1), (2), (3) and/or (7), RCW 36.70A.110, RCW 36.70A.115, RCW
21 36.70A.130(3)(a) and/or (3)(b), and/or WCCWPP C-1 through C-5, D-2, E-4, G-1 through G-
22 4, G-6, and/or G-7, I-2 and/or I-3?

23 **Applicable Laws**

24 **RCW 36.70A.020 Planning goals.**

25 The following goals are adopted to guide the development and adoption of comprehensive
26 plans and development regulations of those counties and cities that are required or choose
27 to plan under RCW 36.70A.040. The following goals are not listed in order of priority and
28 shall be used exclusively for the purpose of guiding the development of comprehensive
29 plans and development regulations:

30 (1) Urban growth. Encourage development in urban areas where adequate public facilities
31 and services exist or can be provided in an efficient manner.

32 ⁸⁷ *Id.*

⁸⁸ WAC 242-03-590(1).

1 **RCW 36.70A.110 Comprehensive plans—Urban growth areas.**

2 **RCW 36.70A.115 Comprehensive plans and development regulations must provide**
3 **sufficient land capacity for development.**

4 Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure
5 that, taken collectively, adoption of and amendments to their comprehensive plans and/or
6 development regulations provide sufficient capacity of land suitable for development within
7 their jurisdictions to accommodate their allocated housing and employment growth,
8 including the accommodation of, as appropriate, the medical, governmental, educational,
9 institutional, commercial, and industrial facilities related to such growth, as adopted in the
10 applicable countywide planning policies and consistent with the twenty-year population
11 forecast from the office of financial management.

12 **RCW 36.70A.210 Countywide planning policies.**

13 **Position of the Parties**

14 Petitioners argue the City is obligated “to ensure there is sufficient land capacity for
15 development. RCW 36.70A.115.”⁸⁹ They cite “flaws in the City’s development of and
16 methodology contained in the land capacity analysis” which they claim violate GMA.
17 Specifically, Petitioners argue the City’s LCA did not account for critical areas and deduct
18 them from the calculation of available land.⁹⁰ Also Petitioners argue the City’s inclusion of
19 tribal lands in the “calculation regarding available land for development”⁹¹ is inappropriate
20 “...[because] neither the County nor the cities have regulatory control or authority over this
21 property” rendering the LCA in violation of RCW 36.70A.115, as there is insufficient capacity
22 of land suitable for development.”⁹² Petitioners contend “there is no evidence the City has
23 analyzed the industrial land designation” in violation of RCW 36.70A.210.⁹³ And, “...rather
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26 ⁸⁹ Petitioners’ Prehearing Brief at 22.

27 ⁹⁰ Petitioners’ Prehearing Brief at 22.

28 ⁹¹ *Id.* See also Ex. WC17, Appendix B, at 2: “there is the potential for significant commercial development on
29 Lummi Nation Trust Land in the Bellingham and Ferndale UGAs...which will not require approval from either
30 city or the County. In order for the land capacity analysis to account for this development, the estimated
31 square footage from the most recent conceptual plan will be considered pending square footage, with 70% of
32 the square footage allocated to the Bellingham UGA and 30% to Ferndale.”

⁹² *Id.* See also *Dragonslayer, Inc. v. City of La Center*, GMHB No. 14-2-0003c (FDO, August 11, 2014) at 17.
 (“The Board further acknowledges tribal trust land is not subject to state or local land use regulations.”).

⁹³ *Id.* at 24

1 than ...permission costs and impact fees being reasonably related to the development, they
2 are flat fees.”⁹⁴ Petitioners argue the fees are “not encouraging growth as required by the
3 GMA (specifically, RCW 36.70A.020(1) and .110.”⁹⁵ Lastly, Petitioners argue the City relies
4 on urban villages to accommodate growth and because of economic considerations such as
5 high building costs and high rents, the Petitioners conclude the City’s actions are clearly
6 erroneous.
7

8 The City responds that the LCA was adopted by Whatcom County and in a previous
9 case the Board found the Petitioners did not carry their burden of proof demonstrating the
10 LCA failed to meet requirements in RCW 36.70A.110 or RCW 36.70A.115.⁹⁶ While
11 requesting that the issue be barred by collateral estoppel, the City contends Petitioners
12 arguments still fail to prove the LCA was not compliant with the GMA.
13

14 **Board Analysis**

15 RCW 36.70A.115 requires counties and cities to adopt CPs and development
16 regulations that “taken collectively . . . provide sufficient capacity of land suitable for
17 development within their jurisdictions to accommodate their allocated housing and
18 employment growth...” But the County is the final decision-maker on UGA boundaries. The
19 record shows the City worked with Whatcom County to develop and complete an LCA to
20 “estimate each UGA’s capacity for population and employment growth during the 20-year
21 planning period for the County and city 2016 CP updates.”⁹⁷ The Board finds the Petitioners
22 conclusory statements about the LCA and critical areas do not prove or demonstrate the
23 City inappropriately used critical area modeling tools to calculate sufficient land available for
24 development within its jurisdiction. The example given by Petitioners, using Exhibit
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28 ⁹⁴ *Id.* at 25 For instance, generally, the park impact fee for a detached single family residence is \$4,808.35 per
29 unit per BMC 19.04.050; the transportation impact fee for a single family house is \$2,138 per unit per BMC
30 19.06.040; school impact fees are \$2,242 per BMC 19.08.060 (which references the fee schedule found at:
31 <https://www.cob.org/documents/planning/applications-forms/permit-center-fees/school-impact-fees.pdf>.)

31 ⁹⁵ *Id.*

32 ⁹⁶ *Whatcom Realtors vs Whatcom County*, GMHB No. 16-2-0007 (FDO, April 7, 2017) at 23.

⁹⁷ Ex. WC17 at 1.

1 POO233, illustrates why the LCA is a good tool for policy analysis on a citywide basis, but
2 not appropriate for localized, parcel specific modeling.

3 Next, the Board finds Petitioners' allegations about tribal and industrial lands
4 unsubstantiated by the record. Given that the County is the final decision-maker on UGA
5 boundaries, Petitioners did not demonstrate that the City's plan adoption under Ordinance
6 2016-11-037 violates RCW 36.70A.115 by failing to provide sufficient capacity of land
7 suitable for development within their jurisdictions to accommodate their allocated housing
8 and employment growth. Petitioners do not make a legal argument substantiating why
9 including tribal lands in the LCA violates RCW 36.70A.115."

11 As for industrial lands, Petitioners allege that the City violated Countywide Planning
12 Policy CWPP I-2 requiring the City to ensure that "Industrial land designations must be
13 sufficient to permit the concentration of industry in appropriate locations beyond 20 years."⁹⁸
14 However, Petitioners have not presented facts and legal argument showing that the Board
15 can rule on this type of issue relating to CWPPs.⁹⁹

17 Petitioners claim the City's "permission costs" or impact fees will be the same
18 although the households are different and "... [I]n doing so, the City is not encouraging
19 growth as required by the GMA (specifically, RCW 36.70A.020(1) and .110) but is stifling
20 growth in violation of the GMA."¹⁰⁰ Petitioners clearly disagree with Whatcom County's final
21 decision setting the UGA boundaries but Petitioners do not make any specific legal
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25 ⁹⁸ *Id.* at 24 and see also Ex. WC18, at. C-8.

26 ⁹⁹ See *Yew Street Associates, et al. v. Whatcom County*, GMHB No. 10-2-0009c (Order on Dispositive Motion
27 October 21, 2016) at 9. "The Board does not have jurisdiction to rule on whether or not a jurisdiction's actions
28 violate CPPs. Jurisdiction is limited to ruling on whether or not legislative action "is in compliance with the
29 requirements of" the GMA. (RCW 36.70A.280,36 RCW 36.70A.300 and RCW 36.70A.302) CWPPs establish a
30 framework for consistency between a county and its cities; they "establish the scope and intent of inter-
31 jurisdictional coordination and joint planning necessary to demonstrate compliance with RCW 36.70A.100".³⁷
32 Petitioners have not alleged the violation of any GMA statute(s) which might have been violated due to the
County's failure to follow CWPPs, let alone any inconsistencies arising due to such a failure.³⁸ Rather, they
allege violations of the CWPPs themselves. Those portions of the Petitioners' issue statements alleging
violations of the County's CWPPs are dismissed as they fail to state claims within the Board's jurisdiction."

¹⁰⁰ Petitioners' Prehearing Brief at 25.

1 argument as to how the City of Bellingham violated RCW 36.70A.110 through Whatcom
2 County's adoption of the UGA.

3 Lastly, Petitioners do not provide evidence from the record that the City violated GMA
4 requirements for the Comprehensive Plan Housing Element under RCW 36.70A.070(2).
5 Instead Petitioners contend the City relies too much on "urban villages" for multi-family
6 housing to direct the City's future growth into compact urban centers; this argument
7 amounts to disagreement with the City on its policy choice for housing. But, they do not
8 identify any specific language in the Housing Element adopted by Ordinance 2016-11-037
9 that violates RCW 36.70A.020(2). Petitioners failed to show in the record how this policy
10 choice by the City favoring "urban villages" violates a specific GMA provision. The report
11 offered by Petitioners during the CP adoption process was considered by the City, as it
12 described in Issue 5 above, as were other reports and analysis. But the City chose to plan
13 for future growth using urban villages and other forms of infilling to accommodate its
14 population growth. **The Board finds and concludes Petitioners have failed to carry**
15 **their burden of proof demonstrating that City Ordinance 2016-11-037 was clearly**
16 **erroneous in regards to the land capacity analysis and the City's choice in housing**
17 **policy. Issue 9 is dismissed.**
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21 **Issue No. 10**

22 Does the City's refusal to recommend addition/expansion of the Bellingham urban growth
23 area to Whatcom County for areas that have urban characteristics and is contiguous to the
24 City violate RCW 36.70A.020(1), (2), (6), and/or (12), RCW 36.70A.110, and/or WCCWPP
25 B-2, C-1, C-2, C-5, D-2, D-4, and/or D-5?

26 **Applicable Law**

27 **RCW 36.70A.110 (3)** Urban growth should be located first in areas already characterized by
28 urban growth that have adequate existing public facility and service capacities to serve such
29 development, second in areas already characterized by urban growth that will be served
30 adequately by a combination of both existing public facilities and services and any additional
31 needed public facilities and services that are provided by either public or private sources,
32 and third in the remaining portions of the urban growth areas. Urban growth may also be
located in designated new fully contained communities as defined by RCW 36.70A.350.

1 **Position of the Parties**

2 Petitioners argue the City did not include certain properties that met “requirements
3 set forth in RCW 36.70A.110(3)” and that “these properties adjacent to the Bellingham UGA
4 were considered for inclusion in the Bellingham UGA during the comprehensive plan
5 process,”¹⁰¹ but the City ultimately did not include those properties in the UGA.¹⁰²
6 Petitioners claim “[i]t is undisputed that the South Yew Street and Caitac areas are
7 “characterized by urban development”¹⁰³ and that the “... areas meet the requirements set
8 forth in RCW 36.70A.110 (3) as they already have urban characteristics, and are adjacent to
9 the Bellingham UGA.”¹⁰⁴ Petitioners concluded “The City’s recommendation to Whatcom
10 County regarding the Bellingham UGA boundaries was in violation of the GMA sections
11 cited above.”¹⁰⁵

12
13 The City responds that the County is ultimately responsible for adopting UGA
14 boundaries and the Board’s previous decision in *Whatcom Realtors v. Whatcom County*
15 found the County’s LCA and UGA boundaries GMA compliant.¹⁰⁶ In addition, the City
16 explains its UGA boundary recommendations to the County “were not part of the text or
17 maps adopted by challenged City Ordinance 2016-11-037.”¹⁰⁷ While the County agreed
18 with the City’s recommendation on its employment growth projection and UGA boundary,
19 the County adopted a higher population growth projection for the City.”¹⁰⁸ Finally, the City
20 argues that its Ordinance 2016-11-037 “reflects Whatcom County’s decision on these
21 matters, not the City’s recommendation... [And] the Board should dismiss this issue.”¹⁰⁹
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27 ¹⁰¹ *Id.* at 29.

28 ¹⁰² Petitioners’ Prehearing Brief at 27-29 See also Ex. CCRES02.

29 ¹⁰³ *Id.* at 29.

30 ¹⁰⁴ *Id.* at 29 and Ex. PPO137, PPO264, PPO346.

31 ¹⁰⁵ *Id.* at 30.

32 ¹⁰⁶ City of Bellingham Prehearing Brief at 29.

¹⁰⁷ City of Bellingham Prehearing Brief at 29, Ex. CCRES02.

¹⁰⁸ *Id.* Ex. WC16 at 2-3; CP02 Land Use Chapter at 18 (Policy LU-46) and 34.

¹⁰⁹ *Id.* at 29.

1 **Board Analysis**

2 Petitioners' claim that the City violated RCW 36.70A.110 is unfounded because
3 under that statute, counties are the responsible entity in designating UGAs:

4 **RCW 36.70A.110 Comprehensive plans—Urban growth areas.**

5 (1) Each county that is required or chooses to plan under RCW 36.70A.040
6 shall designate an urban growth area or areas within which urban growth
7 shall be encouraged and outside of which growth can occur only if it is not
8 urban in nature.

9 Under RCW 36.70A.110, Counties are to consult with cities to establish urban growth
10 population projections and set UGA boundaries but the County is the final decision-maker
11 on UGA boundaries. The record shows the City recommended to the County, in Resolution
12 2015-14, not to include S. Yew Street and S. Caitac areas in the County's final UGA
13 boundary.¹¹⁰ This is the prerogative of the City.¹¹¹ The City analyzed the costs of bringing
14 the S. Yew and S. Caitac properties into the UGA and found it would require capital
15 infrastructure improvements for which they did not have funds. The City's Resolution 2015-
16 14 (which was not challenged) explains the process used by the City to inform the County
17 why it did not want the two properties included in the UGA.¹¹² Nothing in the GMA prohibits
18 the City from making such a recommendation on UGA boundaries to the County decision
19 makers – the GMA actually encourages such collaboration. **The Board finds and**
20 **concludes Petitioners have not carried their burden of proof demonstrating City**
21 **Ordinance 2016-11-037 was clearly erroneous or that the City violated RCW**
22 **36.70A.110. Issue 10 is dismissed.**
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28 ¹¹⁰ Ex. CCRES 02.

29 ¹¹¹ RCW 36.70A.110 and RCW 36.70A.3201 "In recognition of the broad range of discretion that may be
30 exercised by counties and cities consistent with the requirements of this chapter, the **legislature intends for**
31 **the board to grant deference to counties and cities in how they plan for growth**, consistent with the
32 requirements and goals of this chapter.

¹¹² Exhibit CC RES02 Resolution Regarding the Update To Bellingham's Comprehensive Plan, Providing
Recommendations To Whatcom County Regarding Population And Employment Growth Allocations and
Potential Changes To The City's Urban Growth Boundary.

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V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds Petitioners failed to carry their burden of proof demonstrating the City of Bellingham's adoption of Ordinance 2016-11-037 was clearly erroneous, and Petitioners failed to prove any violations of GMA requirements.

The Petition for Review is dismissed, and this case is closed.

SO ORDERED this 17th day of July, 2017.

Nina Carter, Board Member

Raymond L. Paoella, Board Member

Deb Eddy, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.¹¹³

¹¹³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A: Procedural matters

On January 17, 2017, Whatcom County Association of Realtors, Building Industry Association of Whatcom County, Whatcom Affordable Housing Group, South Yew Street Group, Citizens' Alliance for Property Rights, and Whatcom Business Alliance (Petitioners) filed a petition for review. The petition was assigned Case No. 17-2-0002.

A prehearing conference was held telephonically on February 15, 2017. Petitioners appeared through attorney Kristen Reid. Respondent City of Bellingham appeared through its attorney Alan Marriner.

The City of Bellingham filed a dispositive motion¹¹⁴ to dismiss Issues 1, 4, 7, and 10 and all allegations that the City violated County-wide Planning Policies to which the Petitioners objected.¹¹⁵ The motion was denied.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioners' Prehearing Brief, April 10, 2017;
- City of Bellingham's Prehearing Brief, May 1, 2017;
- Petitioners' Reply to Prehearing Brief, May 15, 2017.

Hearing on the Merits

The hearing on the merits convened May 31, 2017, at the Bellingham City Hall. At the Hearing on the Merits, the City distributed a correction to a footnote in the City's Prehearing Brief and informed the Board and Petitioners of references the City would make at the hearing.¹¹⁶ Parties did not raise other preliminary matters at the hearing.

¹¹⁴ City of Bellingham's Dispositive Motion (March 7, 2017) and City of Bellingham's Memorandum in Support of Dispositive Motion (March 7, 2017).

¹¹⁵ Petitioners' Response to City of Bellingham's Dispositive Motions (March 16, 2017).

¹¹⁶ Errata to City of Bellingham's Pre-Hearing Brief and Copies of the Bellingham Municipal Code (May 30, 2017) distributed at the Hearing on the Merits in Bellingham, Washington.